

ASGER IBRAHIMAMIN

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v.

LIFE INSURANCE CORPORATION OF INDIA

(Civil Appeal No. 10251 of 2014)

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OCTOBER 12, 2015

**[VIKRAMAJIT SEN AND ABHAY MANOHAR SAPRE, JJ.]**

*Service Law:*

*Pension – Entitlement of – Employee resigned on personal grounds after completing 23 years 7 months of service – After attaining 50 years of age – Thereafter employer-Corporation notified Life Insurance Corporation of India (Employees) Pension Rules, 1995 – The Rules were given retrospective effect – Employee sought for benefit of pension as per 1995 Rules – Denial of claim by the employer as well as the courts below – On appeal, held: In view of r. 3 of Chapter II of Pension Rules, it is clear that the Rules are applicable to the employee in question – None of the provisions of the Rules and Regulations by which the employee was regulated at the relevant time, provided for voluntary retirement – Rule 31 of the 1995 Rules (which provides for pension on voluntary retirement) when juxtaposed to the facts of the present case, makes it obvious that essential components of r.31 stand substantially fulfilled in the present case – The employee ought not be deprived of pension benefits merely because he styled his termination of services as ‘resignation’ or because there was no provision for voluntary retirement at the relevant time – Life Insurance Corporation of India (Employees) Pension Rules, 1995 – rr. 3 and 31 – Life Insurance Corporation of India (Staff) Regulations, 1960 – reg. 18.*

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A *'Resignation' and 'Retirement' – Distinction between – discussed.*

B *Delay/Laches – In claiming pension – Held: in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third party rights – The claims for pension recurs from month to month and would not get extinguished on application of law of prescription – In case of recurring/successive wrongs*  
 C *the consequential reliefs relating to arrears normally should be restricted to a period of three years prior to the date of filing the case – Limitation.*

D *Legislation – Beneficial legislation – Interpretation of – Held: The employer should construe the provisions of a beneficial legislation in a way that extends the benefit to its employees, instead of curtailing it – Interpretation of Statutes.*

E *Interpretation of Statutes – Pension Rules – Interpretation of – Held: The objective of the Pension Rules is to extend benefits to a class of people to tide over the crisis and vicissitudes of old age – In case of inconsistencies between the statutory provisions and the avowed objective of the State so as to discriminate between the beneficiaries*  
 F *within the class, the ends of justice obligates the court to palliate the differences between the two and reconcile them as far as possible – The court should not go by the letter of the Pension Rules and should go by the laudatory spirit of statutory provisions and fundamental rights u/Art. 14 of the*  
 G *Constitution – Constitution of India, 1950 – Art. 14.*

#### **Allowing the appeal, the Court**

H **HELD: 1.1 The respondent-Corporation has the power to compulsory retire an employee who has attained the age of 50 years, if in its opinion, such**

decision is in the interests of the Corporation; and the employee may seek permission to retire upon completion of 55 years of age and after rendering 25 years of service. This very position finds reiteration in Rule 31 of the Pension Rules under the epithet 'voluntary retirement'. [Para 5] [875-G-H]

1.2 'Resignation' and 'retirement' have disparate connotations; that an employee can 'resign' at any time but, in contradistinction, can 'retire' only on completion of the prescribed period of qualifying service and in consonance with extant Rules and Regulations. [Para 6] [877-B-C]

1.3 The provisions covered by the definition of "retirement", which do not entail forfeiture of service, are sub-regulation (1), sub-regulation (2), and sub-regulation (3) of Regulation 19 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and Rule 14 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985. None of these provisions provides for voluntary retirement like Rule 31 of the Pension Rules, 1995 nor does the definition of "retirement" make any mention of Regulation 19(2A). [Para 9] [881-C-E]

1.4 In the present case, the appellant had tendered his resignation in accordance with the provision of Regulation 18 of LIC of India (Staff) Regulations, 1960, which, does not dissimulate between the termination of service by way of resignation on the one hand and voluntary retirement on the other, or distinguish one from the other. [Para 10] [881-F]

1.5 The appellant had worked continuously for over 20 years, that he sought to discontinue his services and requested waiver of three months notice in writing, and

A that the said notice was accepted by the Respondent Corporation and the appellant was thereby allowed to discontinue his services. If one would examine Rule 31 of the Pension Rules juxtaposed with the  
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B the aforementioned facts, it would at once be obvious and perceptible that the essential components of that Rule stand substantially fulfilled in the present case. [Para 12] [885-B-D]

C 1.6 The Pension Rules of 1995 have included two classes of beneficiaries into one homogenous class, to wit, the employees who had retired before the notified date i.e. 1.11.1993 and those who were to retire after the notified date. The Appellant ought not to be deprived of pension benefits merely because he styled his  
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D termination of services as “resignation” or because there was no provision to retire voluntarily at that time. The commendable objective of the Pension Rule is to extend benefits to a class of people to tide over the crisis and vicissitudes of old age, and if there are some  
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E inconsistencies between the statutory provisions and the avowed objective of the statute so as to discriminate between the beneficiaries within the class, the end of justice obligates this Court to palliate the differences  
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F between the two and reconcile them as far as possible. The Court would be failing in its duty, if it goes by the letter and not by the laudatory spirit of statutory provisions and the fundamental rights guaranteed under Article 14 of the Constitution of India. The State being a  
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G model employer should construe the provisions of a beneficial legislation in a way that extends the benefit to its employees, instead of curtailing it. [Paras 6, 7, 13 and 14] [877-E-G; 886-C-E; 888-B]

H 1.7 The Appellant’s case does not fall within the postulation of Rule 23 as the last four categories or

genres or types of cessation of services are in character punitive; and the first envisages those resignations where the right to pension has not been earned by that time or where it is without the permission of the Corporation. [Para 7] [880-E] A

1.8 Thus the termination of services of the Appellant, in essence, was voluntary retirement within the ambit of Rule 31 of the Pension Rules of 1995. The appellant is entitled for pension, provided he fulfils the condition of refunding of the entire amount of the Corporation's contribution to the Provident Fund along with interest accrued thereon as provided in the Pension Rules of 1995. [Para 16] [888-E] B C

*Sheelkumar Jain v. New India Assurance Co. Ltd. (2011)* 12 SCC 197: 2011 (9) SCR 574 – relied on. D

*Reserve Bank of India v. Cecil Dennis Solomon (2004)* 9 SCC 461: 2003 (6) Suppl. SCR 465; *Shyam Babu Verma v. Union of India (1994)* 2 SCC 521: 1994 (1) SCR 700; *State of M.P. v. Yogendra Shrivastava (2010)* 12 SCC 538: 2009 (14) SCR 1137; *M.R. Prabhakar v. Canara Bank (2012)* 9 SCC 671: 2012 (8) SCR 1072; *National Insurance Co. Ltd. v. Kirpal Singh (2014)* 5 SCC 189: 2014 (1) SCR 380; *UCO Bank v. Sanwar Mal (2004)* 4 SCC 412: 2004 (2) SCR 1125 – distinguished. E F

2.1 In cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. The claims for pension recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining H

- A to the time barred part of it has become unavailable. In the case of recurring/successive wrongs the consequential relief relating to arrears normally should be restricted to a period of three years prior to the date of filing of the case. In the facts of the present case, the claim for pension if otherwise sustainable in law, would be restricted to three years prior to when it was raised in a judicial forum. [Para 4] [872-H; 873-A; 874-A-C]

*Union of India v. Tarsem Singh* (2008) 8 SCC 648: 2008

- C (12) SCR 104 – relied on.

- 2.2 Considering the huge delay, not explained by proper reasons, on part of the appellant in approaching the Court, the benefits of arrears of pension payable to the appellant is limited to three years preceding the date of the petition filed before the High Court. However, if the amount of arrears is less than the amount of refund required, then the pension shall be payable on monthly basis after the date on which the amount of refund is entirely adjusted. [Para 16] [888-F; 889-A]

#### Case Law Reference

	2008 (12) SCR 104	relied on.	Para 4
F	2011 (9) SCR 574	relied on.	Para 10
	2003 (6) Suppl. SCR 465	distinguished.	Para 14
	1994 (1) SCR 700	distinguished.	Para 15
	2009 (14) SCR 1137	distinguished.	Para 15
G	2012 (8) SCR 1072	distinguished.	Para 15
	2014 (1) SCR 380	distinguished.	Para 15
	2004 (2) SCR 1125	distinguished.	Para 15

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. A  
10251 of 2014

From the Judgment and Order dated 1.3.2013 of the  
Division Bench of the High Court of Gujarat at Ahmedabad in  
Letters Patent Appeal No. 1616 of 2012. B

Nikhil Goel, Naveen Goel, Marsook Bafaki for the  
Appellant.

Kailash Vasdev, Jyoti Prakash, Shreyans Singhvi, Umrao  
Singh Rawat, R. Chandrachud for the Respondent. C

The Judgment of the Court was delivered by

**VIKRAMAJIT SEN, J.** 1. The question which falls for  
consideration is whether the Appellant is entitled to claim D  
pension even though he resigned from service of his own  
volition and, if so, whether his claim on this count had become  
barred by limitation or laches.

2. The Appellant joined the services of the Respondent E  
Corporation on 30.6.1967 on the post of Assistant  
Administrative Officer (Chartered Accountant) at the age of  
twenty seven. He worked for 23 years and 7 months in the  
Corporation before tendering his resignation on 28.1.1991,  
owing to "family circumstances and indifferent health", F  
presumably having crossed fifty years in age. The request of  
the Appellant for waiver of the stipulated three months notice  
was favourably considered by the Corporation vide letter dated  
28.2.1991, and the Appellant was allowed to resign from the  
post of Deputy General Manager (Accounts), which he was G  
holding at that time. We shall again presume that the reasons  
that he had ascribed for his retirement, viz. family problems  
and failing health, were found to be legitimate by the  
Respondent, otherwise the waiver ought not to have been  
given. Thereafter, the Central Government in exercise of H

A power conferred under Section 48 of the Life Insurance Corporation Act, 1956 had notified the LIC of India (Staff Regulations, 1960 and thereafter the Life Insurance Corporation of India (Employees) Pension Rules, 1995 (hereinafter referred to as "Pension Rules") which, though notified on 28.6.1995, were given retrospective effect from 1.11.1993. The Pension Rules provide, *inter alia*, that resignation from service would lead to forfeiture of the benefits of the entire service including eligibility for pension.

C 3 On 8.8.1995, that is post the promulgation by the Respondent of the Pension Rules, the Appellant enquired from the Respondent whether he was entitled to pension under the Pension Rules, which has been understood by the Respondent as a representation for pension; the Respondent replied that the request of the Appellant cannot be acceded to. The Appellant took the matter no further but has averred that in 2000, prompted by news in a Daily and Judgments of a High Court and a Tribunal, he requested the Respondent to reconsider his case for pension. This request has remained unanswered. It was in 2011 that he sent a legal notice to the Respondent, in response to which the Respondent reiterated its stand that the Appellant, having resigned from service, was not eligible to claim pension under the Pension Rules. Eventually, the Appellant filed a Special Civil Application on 29.3.2012 before the High Court, which was dismissed by the Single Judge vide Judgment dated 5.10.2012. The LPA of the Appellant also got dismissed on the grounds of the delay of almost 14 years, as also on merits vide Judgment dated 1.3.2013, against which the Appellant has approached this Court.

H 4 As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in *Union of India v. Tarsem Singh*, (2008) 8 SCC 648 that in cases of continuing or successive wrongs, delay and laches



or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held: A

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. *For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties.* But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition. B  
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(emphasis is ours) H

A We respectfully concur with these observations which if  
extrapolated or applied to the factual matrix of the present case  
would have the effect of restricting the claim for pension, if  
otherwise sustainable in law, to three years previous to when  
it was raised in a judicial forum. Such claims recur month to  
B month and would not stand extinguished on the application of  
the laws of prescription, merely because the legal remedy  
pertaining to the time barred part of it has become unavailable.  
This is too well entrenched in our jurisprudence, foreclosing  
any fresh consideration.

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5 The second issue which confronts us is whether the  
termination of service of the Appellant remains unalterably in  
the nature of resignation, with the consequence of disenti-  
tling him from availing of or migrating/mutating the pension scheme  
D or whether it instead be viewed as a voluntary retirement or  
whether it requires to be regarded so in order to bestow this  
benefit on the Appellant; who had 'resigned' after reaching the  
age of fifty and after serving the LIC for over twenty three years.  
The Appellant resigned from service under Regulation 18 of  
E LIC of India (Staff) Regulations, 1960, which along with the  
other provisions of relevance is reproduced for facility of  
reference -

### **SECTION 3 – TERMINATION**

F ***Determination of Service:***

18. (1) An employee, other than an employee on  
probation or an employee appointed on a temporary  
basis, shall not leave or discontinue his service in the  
G Corporation without first giving notice in writing to the  
competent authority of his intention to leave or  
discontinue the service. The period of notice required  
shall be-

H (a) three months in the case of an employee belonging  
to Class I;

(b) one month in the case of other employees.

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Provided that such notice may be waived in part or in full by the competent authority at its discretion. In case of breach by an employee of the provisions of the sub-regulation, he shall be liable to pay the Corporation as compensation a sum equal to his salary for the period of notice required of him, which sum may be deducted from any moneys due to him.

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**Superannuation and Retirement:**

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(2) An employee belonging to Class I or Class II appointed to the service of the Corporation on or after 1st September, 1956, shall retire on completion of 60 years of age, but the competent authority may, if it is of the opinion that it is in the interest of the Corporation to do so, direct such employee to retire on completion of 50 years of age or at any time thereafter on giving him three months' notice or salary in lieu thereof.

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The following Regulations, on which learned Senior Counsel for the LIC has placed reliance, came to be introduced on 16.2.1996, that is after the Appellant had 'resigned' from service. We have called for and perused this Notification, and as we expected, these provisions apply retrospectively with effect from 1.11.1993. These Regulations ordain, *inter alia*, that an employee may be permitted to retire (a) on completion of the age of 55 and (b) after completing 25 years in service. In other words, the Corporation has the power to compulsory retire an employee who has attained the age of 50 years if in its opinion such decision is in the interests of the Corporation; and the employee may seek permission to retire upon completion of 55 years of age and after rendering 25 years of service. This very position finds reiteration in Rule 31 of the Pension Rules under the epithet 'voluntary retirement', which

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A pandect appears to have been available from the inception i.e. 1.11.1993.

B (2A) (a) Notwithstanding what is stated in sub-rules (1) and (2) above, an employee may be permitted to retire at any time on completion of the age 55 after giving three months notice in writing to the appointing authority of his intention to retire.

C (b) (i) Notwithstanding the provisions of Clause (a), an employee governed by the Life Insurance Corporation of India (Employees) Pension Rules 1995 may be permitted to retire at any time after he has completed twenty years of qualifying service, by giving notice of not less than ninety days in writing to the appointing authority.

D Provided that this sub-clause shall not apply to an employee who is on deputation unless after having been transferred or having returned to India, he has resumed charge on the post in India and has served for a period of not less than one year.

E Provided further that this sub-clause shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

F (ii) The notice of voluntary retirement given under sub-clause (i) of clause (b) shall require acceptance by the appointing authority.

G Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

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6. As we have already recounted, the Appellant received a waiver of the requirement of giving three months prior notice of his resolve to “discontinue his service in the Corporation”, bestowing legitimacy to the reasons that compelled him to do so. It also brings to the fore that the 1960 Staff Regulations did not provide for voluntary retirement or VRS as has become commonplace today. This Court has clarified and highlighted that ‘resignation’ and ‘retirement’ have disparate connotations; that an employee can ‘resign’ at any time but, in contradistinction, can ‘retire’ only on completion of the prescribed period of qualifying service and in consonance with extant Rules and Regulations.

7. We shall now consider the Pension Rules of 1995. Rule 3 of Chapter II thereof, provides that the Rules are applicable to employees (1) who were in the service of the Corporation on or after 1.1.1986 and had retired before 1.11.1993 i.e. the notified date, or (2) who retired after 1.11.1993; or (3) who were in the service before the notified date and continued to be in service on or after the notified date; or (4) who were in the service on or after 1.1.1986 but had retired on or after 1.11.1993 and before the notified date. What is discernible from these dates is that the Pension Rules of 1995 have included two classes of beneficiaries into one homogenous class, to wit, the employees who had retired before the notified date and those who were to retire after the notified date. In our opinion, the advantage of these beneficent Rules should be extended even to the Appellant who was similarly placed as the retirees mentioned in Rule 3 but for the fact that he had ‘resigned’ rather than retired. The two provisions caught in the crossfire are Rule 2(s), which defines “retirement” and Rule 23, which deals with the “forfeiture of service”:

**2(s)** “retirement” means,- (i) retirement in accordance with the provisions contained in sub-

A regulation (1) or sub-regulation (2) or sub-regulation (3) of regulation 19 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and rule 14 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985 made under the Act;

(ii) voluntary retirement in accordance with the **provisions** contained in rule 31 of these rules. (emphasis added)

**23. Forfeiture of service** - Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

Voluntary retirement, noted in the sub-Rule (ii) of Rule 2(s), has been defined in Rule 31, and it reads as follows:

**31. Pension on voluntary retirement** - (1) At any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than ninety days, in writing, to the appointing authority, retire from service:

Provided that this sub-rule shall not apply to an employee who is on deputation unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-rule shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous

body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

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(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

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Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

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(3) (a) An employee referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefor;

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(b) on receipt of a request under clause(a), the appointing authority may, subject to the provisions of sub-rule (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

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(4) An employee, who has elected to retire under this rule and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

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A            Provided that the request for such withdrawal shall be made before the intended date of his retirement.

B            (5) The qualifying service of an employee retiring voluntarily under this rule shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of retirement.

C            (6) The pension of an employee retiring under this rule shall be based on the average emoluments as defined under clause(d) of rule 2 of these rules and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension.

E            It seems obvious to us that the Appellant's case does not fall within the postulation of Rule 23 as the last four categories or genres or types of cessation of services are in character punitive; and the first envisages those resignations where the right to pension has not been earned by that time or where it is without the permission of the Corporation.

F            8 The Respondent Corporation has vehemently argued that the termination of services is under Regulation 18 (supra) of the LIC (Staff) Regulations, 1960 and is not covered by the Pension Rules of 1995. Respondent Corporation has controverted the plea of the Appellant that at the relevant date and time, viz. 28.1.1991 there was no alternative for him except to tender his resignation, pointing out that he could not have sought voluntary retirement under Regulation 19(2A) of LIC of India (Staff) Regulations, 1960. If that be so, the Respondent  
G            being a model employer could and should have extended the  
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advantage of these Regulations to the Appellant thereby safeguarding his pension entitlement. However, we find no substance in the argument of the Respondent since Regulation 19(2A) was, in fact, notified in the Gazette of India on 16.2.1996, that is after the pension scheme came into existence with effect from 1.11.1993. Otherwise there would have been no conceivable reason for the Appellant not to have taken advantage of this provision which would have protected his pensionary rights.

9 We also record that the provisions covered by the definition of "retirement", which do not entail forfeiture of service, are sub-regulation (1), sub-regulation (2), and sub-regulation (3) of Regulation 19 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and Rule 14 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985. None of these provisions provides for voluntary retirement like Rule 31 of the Pension Rules nor does the definition of "retirement" make any mention of aforementioned Regulation 19(2A).

10 The facts of the case disclose that the Appellant has worked for over twenty years and had tendered his resignation in accordance with the provision of Regulation 18 of LIC of India (Staff) Regulations, 1960, which, as is apparent from its reading, does not dissimulate between the termination of service by way of resignation on the one hand and voluntary retirement on the other, or distinguish one from the other. Significantly, there was no provision for voluntary retirement at the relevant time, and it was for this reason that the Pension Rules of 1995 specifically provided for it under Rule 31. In this backdrop of facts, we need not dwell much on the issue because the case of **Sheelkumar Jain v. New India Assurance Co. Ltd.**, (2011) 12 SCC 197 is on all fours of this case.

A           **11** In **Sheelkumar**, the Appellant resigned from the  
services of the Respondent Company after serving for over  
20 years on 16.12.1991. His resignation was offered and  
granted under Clause 5 of General Insurance (Termination,  
B Superannuation and Retirement of Officers and Development  
Staff) Scheme, 1976. Thereafter, the Central Government  
formulated General Insurance (Employees') Pension Scheme,  
1995 with retrospective effect from 1.11.1993. Sheelkumar  
applied for pension under this Scheme, which was declined  
on the ground that resignation from service would entail  
C forfeiture of service under Clause 22 of the General Insurance  
(Employees') Pension Scheme, 1995. The Appellant moved  
the High Court challenging the rejection of his claim. His writ  
petition as well as the writ appeal was dismissed by the High  
D Court. The Appellant then moved this Court, whereby we noted  
that Clause 5 of the Scheme of 1976 did not mention  
resignation nor was the Appellant made aware of the distinction  
between resignation and voluntary retirement; that this  
distinction was a product of the General Insurance  
E (Employees') Pension Scheme of 1995. This Court observed:

**20.** Sub-para (1) of Para 5 does not state that the  
termination of service pursuant to the notice given  
by an officer or a person of the Development Staff  
to leave or discontinue his service amounts to  
F "resignation" nor does it state that such termination  
of service of an officer or a person of the  
Development Staff on his serving notice in writing  
to leave or discontinue in service amounts to  
G "voluntary retirement". Sub-para (1) of Para 5 does  
not also make a distinction between "resignation"  
and "voluntary retirement" and it only provides that  
an employee who wants to leave or discontinue his  
service has to serve a notice of three months to the  
H appointing authority.

**21.** We also notice that sub-para (1) of Para 5 does not require that the appointing authority must accept the request of an officer or a person of the Development Staff to leave or discontinue his service but in the facts of the present case, the request of the appellant to relieve him from his service after three months' notice was accepted by the competent authority and such acceptance was conveyed by the letter dated 28-10-1991 of the Assistant Administrative Officer, Indore.

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**23.** The 1995 Pension Scheme was framed and notified only in 1995 and yet the 1995 Pension Scheme was made applicable also to employees who had left the services of Respondent 1 Company before 1995. Paras 22 and 30 of the 1995 Pension Scheme quoted above were not in existence when the appellant submitted his letter dated 16-9-1991 to the General Manager of Respondent 1 Company. Hence, when the appellant served his letter dated 16-9-1991 to the General Manager of Respondent 1 Company, he had no knowledge of the difference between "resignation" under Para 22 and "voluntary retirement" under Para 30 of the 1995 Pension Scheme. Similarly, Respondent 1 Company employer had no knowledge of the difference between "resignation" and "voluntary retirement" under Paras 22 and 30 of the 1995 Pension Scheme, respectively.

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**24.** Both the appellant and Respondent 1 have acted in accordance with the provisions of sub-para (1) of Para 5 of the 1976 Scheme at the time of termination of service of the appellant in the year

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A 1991. It is in this background that we have now to  
decide whether the termination of service of the  
appellant under sub-para (1) of Para 5 of the 1976  
Scheme amounts to resignation in terms of Para  
B 22 of the 1995 Pension Scheme or amounts to  
voluntary retirement in terms of Para 30 of the 1995  
Pension Scheme.

C **25.** Para 22 of the 1995 Pension Scheme states  
that the resignation of an employee from the service  
of the corporation or a company shall entail  
forfeiture of his entire past service and consequently  
he shall not qualify for pensionary benefits, but does  
not define the term “resignation”. Under sub-para  
D (1) of Para 30 of the 1995 Pension Scheme, an  
employee, who has completed 20 years of  
qualifying service, may by giving notice of not less  
than 90 days in writing to the appointing authority  
retire from service and under sub-para (2) of Para  
E 30 of the 1995 Pension Scheme, the notice of  
voluntary retirement shall require acceptance by the  
appointing authority. Since “voluntary retirement”  
unlike “resignation” does not entail forfeiture of past  
services and instead qualifies for pension, an  
F employee to whom Para 30 of the 1995 Pension  
Scheme applies cannot be said to have “resigned”  
from service.

G **26.** In the facts of the present case, we find that the  
appellant had completed 20 years of qualifying  
service and had given notice of not less than 90  
days in writing to the appointing authority of his  
intention to leave the service and the appointing  
authority had accepted notice of the appellant and  
relieved him from service. Hence, Para 30 of the  
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1995 Pension Scheme applied to the appellant even though in his letter dated 16-9-1991 to the General Manager of Respondent 1 Company he had used the word "resign".

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**12** What is unmistakably evident in the case at hand is that the Appellant had worked continuously for over 20 years, that he sought to discontinue his services and requested waiver of three months notice in writing, and that the said notice was accepted by the Respondent Corporation and the Appellant was thereby allowed to discontinue his services. If one would examine Rule 31 of the Pension Rules juxtaposed with the aforementioned facts, it would at once be obvious and perceptible that the essential components of that Rule stand substantially fulfilled in the present case. In **Sheelkumar**, this Court was alive to the factum that each case calls for scrutiny on its own merits, but that such scrutiny should not be detached from the purpose and objective of the concerned statute. It thus observed:

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**30.** The aforesaid authorities would show that the court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the court will have to keep in mind the purposes of the statutory provisions.

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**31.** The general purpose of the 1995 Pension Scheme, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the insurance companies and had retired after putting in the qualifying service in the insurance companies. Paras 22 and 30 of the 1995 Pension Scheme cannot be so construed so as to deprive

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A of an employee of an insurance company, such as  
the appellant, who had put in the qualifying service  
for pension and who had voluntarily given up his  
service after serving 90 days' notice in accordance  
with sub-para (1) of Para 5 of the 1976 Scheme  
B and after his notice was accepted by the appointing  
authority.

13 The Appellant ought not to be deprived of pension  
benefits merely because he styled his termination of services  
C as "resignation" or because there was no provision to retire  
voluntarily at that time. The commendable objective of the  
Pension Rule is to extend benefits to a class of people to tide  
over the crisis and vicissitudes of old age, and if there are  
some inconsistencies between the statutory provisions and  
D the avowed objective of the statute so as to discriminate  
between the beneficiaries within the class, the end of justice  
obligates us to palliate the differences between the two and  
reconcile them as far as possible. We would be failing in our  
duty, if we go by the letter and not by the laudatory spirit of  
E statutory provisions and the fundamental rights guaranteed  
under Article 14 of the Constitution of India.

14 Reserve Bank of India v. Cecil Dennis Solomon,  
(2004) 9 SCC 461 relied upon by the Respondent, although  
F distinguishable on facts, has ventured to distinguish "voluntary  
retirement" from "resignation" in the following terms:

10. In service jurisprudence, the expressions  
"superannuation", "voluntary retirement",  
G "compulsory retirement" and "resignation" convey  
different connotations. *Voluntary retirement and  
resignation involve voluntary acts on the part of  
the employee to leave service. Though both  
involve voluntary acts, they operate differently.*  
H *One of the basic distinctions is that in case of*

*resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal (1989 Supp (2) SCC 175) on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India v. Gopal Chandra Misra ((1978) 2 SCC 301) it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.*

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(emphasis is ours)

The legal position deducible from the above observations further amplifies that the so-called resignation tendered by the

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- A Appellant was after satisfactorily serving the period of 20 years ordinarily qualifying or enabling voluntary retirement. Furthermore, while there was no compulsion to do so, a waiver of the three months notice period was granted by the Respondent Corporation. The State being a model employer
- B should construe the provisions of a beneficial legislation in a way that extends the benefit to its employees, instead of curtailing it.

- C **15** The cases of *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521; *State of M.P. v. Yogendra Shrivastava*, (2010) 12 SCC 538; *M.R. Prabhakar v. Canara Bank*, (2012) 9 SCC 671; *National Insurance Co. Ltd. v. Kirpal Singh*, (2014) 5 SCC 189; *UCO Bank v. Sanwar Mal*, (2004) 4 SCC 412 relied upon by the parties are distinguishable on facts from
- D the present case.

- E **16** We thus hold that the termination of services of the Appellant, in essence, was voluntary retirement within the ambit of Rule 31 of the Pension Rules of 1995. The Appellant is
- F entitled for pension, provided he fulfils the condition of refunding of the entire amount of the Corporation's contribution to the Provident Fund along with interest accrued thereon as provided in the Pension Rules of 1995. Considering the huge delay, not explained by proper reasons, on part of the Appellant in
- G approaching the Court, we limit the benefits of arrears of pension payable to the Appellant to three years preceding the date of the petition filed before the High Court. These arrears of pension should be paid to the Appellant in one instalment within four weeks from the date of refund of the entire amount payable by the Appellant in accordance of the Pension Rules of 1995. In the alternative, the Appellant may opt to get the amount of refund adjusted against the arrears of pension. In the latter case, if the amount of arrear is more than the amount
- H of refund required, then the remaining amount shall be paid



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within two weeks from the date of such request made by the Appellant. However, if the amount of arrears is less than the amount of refund required, then the pension shall be payable on monthly basis after the date on which the amount of refund is entirely adjusted. A

**17** The impugned Judgments of the High Court are set aside and the Appeal stands allowed in the terms above. However, parties shall bear their respective costs. B

Kalpana K. Tripathy

Appeal allowed. C